IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6688 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVIN V ASHAR

Versus

JAIDEV

Appearance:
MR SN SOPARKAR for Petitioner
MR AKHIL KURESHI WITH MR MR BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE C.K.BUCH

Date of decision: 17/02/2000

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

The short, but interesting question which has surfaced in this petition under Article 226 of the Constitution of

India is, as to whether the impugned order of the respondent No.1, under section 264 of the Income Tax Act, 1961 (IT Act), dated 26.3.92, in respect of assessment year 1975-76 to 1981-82 (7 years), whereby, the revision application of the petitioner-assessee came to be rejected on the ground that it was barred by limitation, is legal, valid or justified or not?

The petitioner-assessee was working as Development Officer for the Life Insurance Corporation of India and was in receipt of incentive bonus, partly, in order to reimburse the expenditure required to be incurred for procuring business. He raised this issue, for the first time, in the assessment year 1982-83, contending that since part of the incentive bonus received is required to be spent for procuring business, part of incentive bonus should be exempted under the provisions of IT Act. The contention was accepted by the Assistant Commissioner of Income Tax, Jamnagar, whereby, he held that the petitioner is entitled to deduction at 40 per cent of the incentive bonus as expenses. The Income Tax Appellate Tribunal, later on, confirmed it.

Prompted by this, the petitioner-assessee filed Revision Application on 20.1.84 before the respondent for assessment years 1975-76 to 1981-82, against the orders under section 143(3) passed by the ITO, claiming the part of the incentive bonus as permissible expenditure. Since there was delay, as the revision was for past 7 years assessment, the assesse, inter alia, contended that the order of the first appellate authority for the assessment year 1982-83 came to be recorded on 22nd December, 1983 and within a period of one month, the revision came to be filed on 20.1.84, for the entire block of seven years by invoking the aids of the provisions of section 264 of the IT Act. It is on this ground, the delay was sought to be condoned.

The respondent, Commissioner of Income Tax, did not find favour with the claim for condonation of delay holding that the decision of the appellate authority for the assessment year 1982-83 in favour of the assessee would not give rise to a right to the assessee to have filed belated revision application for 7 years and to claim certain deductions for the incentive bonus given by the LIC. According to him, each assessment year is separate and independent proceedings and each claim has to be taken up within the appropriate time-frame. He, therefore, held that the assessee was not prevented from making a revision application within the stipulated period, and therefore, the revision came to be dismissed

on technical ground of barred by limitation.

After having heard the learned advocates appearing for the parties and considering the facts emerging from the record of the present case, it is clear that the respondent, Commissioner of Income Tax, while determining and deciding the revision under section 264 of the IT Act had not given an opportunity of hearing. This aspect itself is sufficient to direct the respondent No.1 to rehear the revision filed by the assessee and to decide it in accordance with law after giving an opportunity of hearing to the petitioner. Obviously, the matter is also not decided on merits. It came to be decided only on the ground of limitation. Since non-hearing of the assessee by the authority strikes at the root of the impugned order, we are left with no alternative but to quash the impugned order. The impugned order is, therefore, required to be quashed. The impugned order dated 26.3.92, as at, Annexure A, is quashed and set aside. Obviously, the matter shall go back to him for reconsideration, adjudication and determination, after affording the assessee with an opportunity of hearing. The respondent authority, obviously, shall have to consider the merits of the claims made in the revision in the light of the decision of this Court rendered in C.I.T. v. K.H.Shelat, 235 ITR 635 and objectively, in accordance with law.

In the result, the petition is partly allowed, in the light of the aforesaid observations and directions, leaving the parties to bear their own costs.

.....

(vjn)